IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b)

Description of Case.

W.P. No. 1292 (S/S) of 2006

Date of decision :- 26-10-2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date :- 26-10-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 1292 (S/S) of 2006

Ashish Kumar Pandey
S/o Sri Anand Swroop Pandey
C/o Ramesh Joshi,
R/o Village Nagari Gaon Patti,
Post Bhowali,
District – Nainital .....Petitioner

Versus

1. Chairman, Uttaranchal Public Service Tribunal
2. State of Uttaranchal
   through Principal Secretary,
   Personnel Department, Government of Uttaranchal
   Dehradun. .....Respondents

Mr. M.K. Chand, learned counsel for the petitioner.
Sri N.P. Sah, learned standing counsel for the respondents/ State.

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs: -

> "i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 30.08.2006 as contained in Annexure No.1 to the writ petition.
>
> ii) To issue a writ, order or direction in the nature of mandamus commanding the opposite party to allow the petitioner to work and pay him salary regularly every month in accordance with law.
>
> iii) To pass any such order or direction as the circumstances of the case may admit of in the interest of justice."

2. The State of Uttaranchal notified the Constitution of Public Service Tribunal under U.P. Public Service Tribunal in the year 2001. Thereafter, several posts were sanctioned by the State Government in the respective pay scale so as to make the institution as functional. The petitioner was appointed on the post of Clerk against the existing vacancy in

Uttaranchal Public Services Tribunal on 25.11.2005 in the pay scale of Rs. 4000-6000/-. It was further pleaded that all the members of staff working in the Tribunal had been appointed on adhoc basis. It was further pleaded that all the persons appointed in the Tribunal had been retained in service except 10 persons appointed during the year 2005-06 and they had arbitrarily been dispensed with on the ground that their services are no more required. The services of the petitioner were terminated vide order dated 30.08.2006 in utter violation of law. Hence the petitioner has preferred this writ petition before this court.

3. Heard Sri M.K. Chand, learned counsel for the petitioner; Sri N.P. Sah, learned standing counsel for the State and perused the record.

4. It was contended on behalf of the learned counsel for the petitioner that as many as 48 posts were sanctioned by the State Government in the respective pay scale in the Public Services Tribunal Uttaranchal and the posts were filled up by the adhoc employees. It was further contended that Section 87 of the U.P. Reorganization Act, 2000 (hereinafter referred as Act) contemplates the power to adapt laws made before the appointed day of the erstwhile State of U.P. or could have adapted or modified before the expiry of two years from the appointed date, i.e., 09.11.2000. It was further contended that the State had adapted the U.P. Public Services Tribunal Act 1976 but no service rules were framed so far as to regulate the recruitment and condition of the services of the staff required to manage the working of the Public Services Tribunal. It was further contended that in absence of any such rules, the Chairman had the power to

appoint the adhoc employees, as such, the appointments made by the Chairman are in accordance with the spirit of the Act. It was further contended that Section 86 of the Act only provides the territorial extent of the laws and Section 87 of the Act deals with the powers of the State to adapt the laws within two years from the date of the creation of the State. It was further contended that the State had not adapted service rules framed by the Tribunal within two years, as such, the rules are not applicable in the Tribunal. It was further contended that the power to constitute laws could only be made available to the Tribunal when there was any rule in existence. Learned counsel for the respondents refuted the contention and contended that perusal of Section 86, 87 and 88 of the Act clearly shows that the laws applicable in the erstwhile State of U.P. are applicable in the State of Uttaranchal even without adaptation. It is not disputed that the U.P. Public Services Tribunal Act had been adapted by the State of Uttaranchal. It is also evident from the notification by which the State Government issued the notification u/s 3 of the said Act. It also gives the picture that the said Act has been made applicable to the State of Uttaranchal. It is also evident from the petition itself that the petitioner had specifically pleaded in the petition that the State Government sanctioned 48 posts for the Tribunal to make the Tribunal functional. Thus, this fact leads to take an inference that the said Act was adopted and made applicable to the State of Uttaranchal. The word used in Section 86, 87 and 88 of the Act is the word ‘law’. The Parliament has not used the Enactment or the Act. The work ‘law’ had a wide meaning. Law, as per the constitution includes any notification and order. The U.P. Reorganisation Act had been enacted under Article 3 of the Constitution, as such, the word

'law' had a wider connotation in this regard. The word 'law has been defined u/s 2 (f) of the U.P. Reorganization Act, 2000 as under :-

> *"'law' includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Uttar Pradesh;"*

Thus the word 'law' used in the aforesaid Section had a wide implication in this regard. It cannot be successfully argued by the learned counsel for the petitioner that certain parts of the Act are only applicable to the State of U.P. and certain parts are only applicable to the State of Uttaranchal. Learned counsel for the petitioner tried to point out that the appointments made in the erstwhile State of U.P. were at Lucknow hence the service rules framed under the Act would not be applicable in Uttaranchal. If it would have been the correct position, Section 3 of the said Act would not have been applicable to the State of Uttaranchal because it only provides that this reference would be made to the Tribunal which is situated at Lucknow. The Act had already been adopted by the State of Uttaranchal, thus the notification and orders issued thereunder will be deemed to have been adopted by the State of Uttaranchal. There is no need to adopt the rules made thereunder afresh. Section 86, 87 and 88 of the Act clearly covers such cases where no adaptation has been made of the U.P. laws even after two years in the State of Uttaranchal. I do not find any merit in the arguments raised by the learned counsel for the petitioner.

5. Learned counsel for the petitioner contended that the erstwhile Chairman had appointed all the members of staff on adhoc basis in the Tribunal. They are retained in services

whereas 10 employees appointed during the year 2005-06 had arbitrarily been ousted from the services on the ground that their services were no more required. It was further contended that all the officers and officials similarly situated have been left undisturbed. The termination orders have been passed only against 10 persons. It was further contended that the other persons who are already working in the said Tribunal on ad hoc basis, their services had not been terminated. It was further contended that the termination order had been issued selective against some persons without any cogent reason thereof. It was further contended that this shows bias against the particular group of persons who have been appointed by the then Chairman. It was further contended that the said termination order is liable to be quashed on this ground alone. The learned Standing Counsel refuted the contention and contended that the petitioner had got no right upon the post as the appointment has been made only on the ad hoc basis. It is well settled principle of law that if an ad hoc appointment is made, the continuance of the said person on the said post did not confer any right to the petitioner to remain on the same post. It is not, as if, the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. If any illegality had been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. No equality can be claimed in illegality is now well settled. Even in this behalf Article 14 of the Constitution would not be applicable. The past practice is

not always the best practice. The Apex Court has held at para 75 **in State of U.P. Vs. Neeraj Awasthi and others, (2006) 1 SCC p/667** as under :-

> *"The fact that all appointments have been made without following the procedure, or services of some persons appointed have been regularised in the past, in our opinion, cannot be said to be a normal mode which must receive the seal of the court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. The State and the board were bound to take steps in accordance with law. Even in this behalf Article 14 of the constitution will have no application. Article 14 has a positive concept. No equality can be claimed in illegality is now well settled."*

6. When a person enters a temporary employment or gets engagement as a contractual or casual worker, ad hoc and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual, contractual or ad hoc in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only be following a proper procedure for selection. Therefore, the theory of legitimate expectation cannot be successfully advanced by the petitioner. It is also obvious that the theory cannot be invoked to seek a positive relief of being remained in the post. It has been held in para 36 and 37 in **Secretary, State of Karnataka & others Vs. Umadevi & others** reported in **2006 AIR SCW p/1991** as under :-

> 36. While directing that appointments, temporary or causal, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person

who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

37. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in Dharwad1, Piara Singh5, Jacob and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in Council for Civil Services Union v. Minister of Civil Service, National Buildings Construction Corpn. v. S. Raghunathan and Chanchal Goyal (Dr.) v. State of Rajasthan.] There is no case that any assurance was given by the government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the government after Dharwad decision. Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim

based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

7. In view of the above, the petitioner was appointed on ad hoc basis and working as an ad hoc employee in the respondents' establishment does not get any right to remain in the post or to continue in the post after his termination. The termination order is simplicitor and it is not statutory. Hence the termination order is valid.

8. In view of the foregoing discussion, the writ petition devoids of merit is liable to be dismissed and is dismissed accordingly. The parties shall bear their own costs.

9. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

26th October, 2006
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